

WILFRED PLOMIS

IBLA 94-724

Decided June 24, 1997

Appeal from a decision of the Eastern States Office, Bureau of Land Management, dismissing a protest of termination of oil and gas leases LAES 33018 and ARES 32454 and the filing of reinstatement fees.

Affirmed.

1. Oil and Gas Leases: Reinstatement

Under 43 C.F.R. § 3108.2-2(a), an oil and gas lease terminated because rental was not received by MMS on its anniversary date may be reinstated under class I reinstatement provisions where the envelope in which the rental was mailed was postmarked on or before the anniversary date of the lease. Reinstatement requires the filing of a petition for reinstatement and a \$25 nonrefundable filing fee. 43 C.F.R. § 3108.2-2(a)(3). A lessee whose lease is reinstated because he meets the regulatory prerequisites is not entitled to the refund of his filing fees.

2. Evidence: Presumptions—Oil and Gas Leases: Reinstatement

A presumption of regularity supports the official acts of public officers in the discharge of their duties. The presumption is not overcome by suggestions or speculations that a lease rental payment, which was filed with MMS after the date on which it was due, was belatedly filed because it was improperly handled or erroneously date-stamped by the Departmental employees who received it.

APPEARANCES: Wilfred Plomis, Wilmington, Delaware, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On July 1, 1994, the Eastern States Office, Bureau of Land Management (BLM), issued a decision approving a petition filed by Wilfred Plomis for class I reinstatement of oil and gas leases LAES 33018 and ARES 32454 and dismissing a protest filed by Plomis objecting to the termination of his leases and requesting refund of his filing fees for reinstatement. Plomis filed a timely appeal challenging dismissal of his protest.

The Mineral Management Service's (MMS) Lakewood, Colorado, Office received Plomis' check, dated December 30, 1993, for payment of the rental fees on January 6, 1994, in an envelope postmarked December 30, 1993. The anniversary date for the leases was January 1, 1994. Because rental payments for the leases were not received on or before that date, the leases terminated by operation of law.

On February 7, 1994, BLM mailed to Plomis Notices of Termination and class I reinstatement forms. The Notices advised that the leases could be reinstated if a petition for reinstatement and a \$25 nonrefundable filing fee per lease were submitted to BLM within 60 days of receipt of the Notices.

Plomis filed petitions for reinstatement of the leases, the filing fees, and a protest letter, in which he explained that he was submitting the filing fees under protest because he found it difficult to understand why his lease rental check was not received by MMS until January 6, 1994. Plomis speculated that MMS was careless in picking up its mail and suggested that MMS' log-in procedures may have been irregular.

In its Decision, BLM noted that it was the lessee's responsibility to mail rental payment sufficiently in advance of the due date to account for normal delays in transmittal and collection so as to assure delivery by the due date. It stated that the \$25 filing fee per lease was a necessary requirement for reinstatement and accordingly dismissed Plomis' protest.

On appeal, Plomis continues his speculation as to irregularities attending the filing and date-stamping of official documents mailed to Departmental offices. Plomis also asserts that the applicable regulation, 43 C.F.R. § 3103.2-2, requiring rental payments to be paid on or before the anniversary date of the lease, is "unfair to the Citizen and allows a lot of room for problems."

[1] The requirement to pay a nonrefundable fee of \$25 for the filing of a petition for reinstatement is included in 43 C.F.R. § 3108.2-2(a)(3), a duly promulgated regulation. Duly promulgated regulations have the force and effect of law and are binding on the Department. Jerry L. Fabrizio, 138 IBLA 116, 120 (1997); Arthur Farthing, 136 IBLA 70, 74 (1996), and cases cited. There are no provisions in the reinstatement regulations providing for waiver or discretionary application of this requirement.

[2] Regarding Plomis' claims that MMS must have mishandled his check, we have stated that one who chooses a means of delivery thereby assumes the risk that his chosen agent may not deliver the item which was sent or the risk that such an item may not be delivered in time to meet a deadline. Morgan Richardson Operating Co., 126 IBLA 332, 333 (1993); Amanda Mining & Manufacturing Association, 42 IBLA 144, 146 (1979). In this case, Plomis assumed that his check, mailed on December 30, 1993, in Wilmington, Delaware, would reach MMS on or before the deadline date. Such an assumption ignores the normal delays in the transmission, collection, and delivery of the mails, especially during a holiday season. The loss caused by

the failure to make timely delivery must be borne by Plomis, who chose the time of posting his mail and the means of delivery. See Paul W. Tobeler, 131 IBLA 245, 248 (1994); James B. Pauley, 53 IBLA 1, 4 (1981) and cases cited.

In addition, there is a legal presumption of regularity which supports the official acts of public officers in the proper discharge of their duties, and, therefore, administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. See, e.g., Legille v. Dann, 544 F.2d 1, 8-9 (D.C. Cir. 1976); H.S. Rademacher, 58 IBLA 152, 155 (1981). The Board accords great weight to this presumption of regularity, which is not overcome by an uncorroborated allegation that a document or filing was improperly logged or date-stamped by the Departmental employees charged with those responsibilities. See Bernard S. Storper, 60 IBLA 67 (1981), aff'd, Civ. No. 82-0449 (D.D.C. Jan. 20, 1983).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we conclude that BLM properly dismissed Plomis' protest.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

David L. Hughes
Administrative Judge

